



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Cleta Mitchell  
Foley & Lardner LLP  
3000 K Street, N.W.  
Suite 500  
Washington, D.C. 20007

**NOV 19 2012**

RE: MUR 6514  
Make Us Great Again, Inc. and  
Paul Kilgore in his official capacity  
as Treasurer

Dear Ms. Mitchell:

On December 22, 2011, the Federal Election Commission notified your client, Make Us Great Again, Inc. and Paul Kilgore in his official capacity as Treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on November 8, 2012, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548.

Sincerely,

Roy Q. Lockett  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

12044322785

12044322786

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT:** Make Us Great Again, Inc. and  
Paul Kilgore in his official capacity  
as Treasurer

**MUR:** 6514

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Campaign Legal Center and Democracy 21. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that Make Us Great Again, Inc. and Paul Kilgore in his official capacity as Treasurer (“MUGA”), an independent expenditure-only political committee, gave video footage to RickPerry.org, Inc. and Salvatore Purpura in his official capacity as Treasurer (the “Committee”), that the Committee used in a television commercial. The Committee is the principal campaign committee of former presidential candidate Rick Perry. Citing Advisory Op. 2010-11 (Commonsense Ten), the complaint asserts that such a contribution violates the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations because independent expenditure-only committees are prohibited from making contributions to candidates. The complaint also alleges that the contribution is excessive because the video footage likely cost more than \$2,500.<sup>1</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

MUGA registered as an independent expenditure-only committee with the Commission on July 28, 2011. MUGA’s purpose was to support and promote Governor Rick Perry’s

<sup>1</sup> The complaint does not allege that there was unlawful coordination between MUGA and the Committee, and based on the available facts, there is no record evidence to suggest that there was any coordination relating to the video footage at issue. *See* 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.21.

1 candidacy for President. Jason Miller Aff. ¶ 2.<sup>2</sup> MUGA paid camera crews to shoot footage of  
2 Governor Perry at public events, which was used in certain MUGA ads, including the 31-second  
3 ad entitled "Conservative" at issue. Scott Rials Aff. ¶ 3.<sup>3</sup> *Id.* Jamestown Associates, Inc., a  
4 political consulting firm, obtained and created the footage for the MUGA ad at issue. Miller Aff.  
5 ¶¶ 1, 4. MUGA's ad appears to have been distributed in early November 2011. *See* Ben Smith,  
6 *MUGA's Great-Looking Ad*, POLITICO, Nov. 3, 2011; Miller Aff. ¶ 5.

7 The Committee incorporated less than 10 seconds of the MUGA footage from  
8 "Conservative" in its two-minute, 45-second-long ad entitled "Securing the American Dream  
9 (Marcus' [sic] Story)." The Committee's ad was distributed in late November 2011, around  
10 Thanksgiving. *See* Ben Smith, *Perry Ad Features Super PAC Footage*, POLITICO, Nov. 26, 2011  
11 (attached to MUGA's Response). The footage at issue consists of a Governor Perry handshake,  
12 a Governor Perry headshot partially framed by an American flag, and a second headshot. *See id.*  
13 MUGA does not dispute that the Committee's ad contains video footage drawn from MUGA's  
14 ad. *See* MUGA Response.

15 MUGA contends that its principals, vendors, and consultants were unaware that the  
16 Committee used the footage MUGA created until a journalist contacted MUGA after the  
17 Committee broadcast its ad. MUGA Resp. at 2; Miller Aff. ¶ 9. MUGA asserts further that  
18 every vendor or consultant to MUGA operated under strict rules not to have any communication  
19 with the Perry campaign, and that, in fact, no vendor or consultant had any such communication.  
20 Miller Aff. ¶¶ 11, 12, 14; Rials Aff. ¶¶ 7-9, 14.

---

<sup>2</sup> Jason Miller attests that he is a partner in Jamestown Associates, Inc., a Republican political consulting firm, and that Jamestown was involved in producing the MUGA ad at issue.

<sup>3</sup> Scott Rials attests that he was the Executive Director of MUGA, and that Miller served as Communications Director.

**B. Legal Analysis**

The complaint asserts that MUGA's conveyance of the video footage to the Committee constituted an excessive or prohibited contribution because MUGA provided the footage either without charge or at less than the normal rate for such footage. Comp. ¶ 2; *see* 2 U.S.C. § 431(8)(A)(i). In supporting its allegation, the complaint cites Advisory Op. 2010-11 (Commonsense Ten) for the proposition that an independent expenditure-only group is prohibited from making contributions, "whether direct, in-kind, or via coordinated communication, to federal candidates or committees." Advisory Op. 2010-11 at 2-3.<sup>4</sup>

The complaint and attached sources conclude that MUGA gave video footage to the Committee because the Committee's ad contained some of the same footage that aired in MUGA's ad. MUGA denies that it gave video footage to the Committee or otherwise coordinated with the Committee.

Here, the footage at issue was a minimal part of the advertisement (less than ten seconds of the Committee's almost three-minute-long advertisement) and was used as an incidental part of the advertisement. Given the facts presented in this matter, the Commission exercises its prosecutorial discretion and dismisses the complaint that Make Us Great Again and Paul Kilgore in his official capacity as Treasurer, violated 2 U.S.C. § 441a(a) by making an unlawful contribution.

---

<sup>4</sup> An independent expenditure-only committee can make contributions, subject to the statutory source and amount limits, to federal candidates if the committee maintains a separate bank account. *See FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (Oct. 5, 2011). The Commission does not know whether MUGA maintains such a separate contribution account.